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STATUTORY INSTRUMENTS

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**2001 No. 3286**

**The Fossil Fuel Levy (Amendment) (No. 2) Regulations 2001**

**Amendment**

3.—(1) The Principal Regulations are amended in accordance with this regulation.

(2) In regulation 2(1) the definitions of “levy payment date”, “licensed supplier” and “public electricity supplier” shall be replaced with the following definitions—

““levy payment date” in relation to any month after May 2001, means the fifth banking day of each qualifying month and the first levy payment date shall be 8th May 2001;”;

““licensed supplier” means an electricity supplier as defined in section 6(9) of the Act (as inserted by section 30 of the Utilities Act 2000) who supplies customers in England and Wales;”;

““public electricity supplier” means a person who, prior to 1st October 2001, was authorised by a licence to supply electricity under section 6(1)(c) of the Act (as that section was originally enacted) and whose “authorised area” (as defined in section 6(9) of the Act as that section was originally enacted) was wholly or mainly in England and Wales;”.

(3) In regulation 2(1) the following definition shall be inserted in the appropriate place:

““licensed distributor” means an electricity distributor as defined in section 6(9) of the Act (as inserted by section 30 of the Utilities Act 2000);”.

(4) In regulation 2(1) after the definition of “unit” the words commencing “and expressions” until the end of the paragraph shall be replaced with the following:

“and expressions which are used in section 33 of the Act (as it extends to England and Wales) shall have the same meanings in these Regulations as in that section save where the context requires otherwise and any reference to section 32 of the Act is a reference to that section as saved and modified by Order made under section 67 of the Utilities Act 2000.”.

(5) In regulation 2(2) the word “and” shall be deleted at the end of sub-paragraph (c) and the following shall be inserted at the end of sub-paragraph (d): “; and

(e) any reference to leviable electricity is to leviable electricity supplied to customers in England and Wales.”.

(6) Regulations 5 and 5A shall be replaced with the following:

**“Payments in respect of levy etc: prescribed methods**

5.—(1) In relation to a levy payment date the method of calculating the amount of the payment required to be made by either section 33(5) or 33(5A) of the Act (“the Amount”) is as described in this regulation.

(2) The Amount is the number which results from applying the formula in paragraph (3) together with any modification to that number which is made pursuant to paragraph (5).

(3) The formula is—

$$C - A + a - ii + io - x + y + z$$

where—

“C” is the aggregate payments paid or due to be paid by the nominated person in the relevant period pursuant to or otherwise arising from qualifying arrangements (to the extent not already taken into account in the calculation of the Amount for a previous levy payment date);

“A” is the aggregate payments received by the nominated person during the relevant period in relation to sales of electricity or rights relating to electricity generated pursuant to qualifying arrangements;

“a” is, subject to paragraph (4), the costs (other than interest) reasonably incurred by the nominated person in relation to the business in the relevant period;

“ii” is interest received by the nominated person in the relevant period on any sums held by it in relation to the business;

“io” is interest paid by the nominated person in the relevant period on borrowings made by it in order to enable it to conduct the business efficiently provided that the interest rate with reference to which such interest is calculated does not exceed the prescribed interest rate;

“x” is zero unless the Authority has determined an amount in accordance with paragraph (6), in which case “x” is that amount;

“y” is zero unless an amount is due to be paid on the levy payment date pursuant to regulation 28(4) and (5), in which case “y” is that amount; and

“z” is zero unless the Authority has determined any amount in accordance with paragraph (7), in which case “z” is the aggregate of any such amounts.

(4) The costs of the nominated person may only be included in item “a” above to the extent that those costs in the relevant period when added to the sum included as item “a” in the above calculation in each of the eleven months prior to the relevant period do not exceed the costs cap. Having so calculated, such costs incurred in the relevant period in excess of the costs cap may not be included in “a” in calculations of the Amount in relation to any future levy payment date.

(5) Additions to or subtractions from the number resulting from the application of the formula in paragraph (3) may be made to reflect—

(a) sums received or paid by the nominated person in relation to the items listed in paragraph (3) in order to correct or update figures given for payments or receipts in relation to those items in relation to any previous levy payment date; or

(b) over or underpayments where the procedures in regulation 42 have been followed.

(6) Where the Authority reasonably considers that the nominated person has not complied with the debt recovery procedure established in accordance with regulation 5A to a material extent in respect of a debt or debts, it may determine that an amount representing interest on any such outstanding debt or debts may be used as the figure for “x” in the formula in paragraph (3) for the purpose of calculating the Amount in relation to a particular levy payment date.

(7) Where, in relation to any previous levy payment date in calculating the Amount the Authority has determined that “x” should include a figure in connection with a particular debt owing to the nominated person, and the said debt has since been recovered by the nominated person in full, for the purposes of calculating the Amount on the levy payment date following such recovery of the debt the Authority shall determine an amount for inclusion in “z” which is equivalent to the aggregate of any figures included in “x” in relation to that debt in the calculation of the Amount on any previous levy payment date.

(8) Where the Amount is a positive number that number represents the amount which is required to be paid to the nominated person by section 33(5) of the Act in accordance with regulation 28.

(9) Where the Amount is a negative number that number represents the amount which is required to be paid by the nominated person to the prescribed person by section 33(5A) of the Act in accordance with regulation 41.

### **Debt Recovery Procedure**

**5A.**—(1) The Authority shall, by 30th November 2001 and having first consulted the nominated person and the Secretary of State, determine a procedure with the aim of ensuring the prompt collection by the nominated person of debts owing to it in relation to the business.

(2) The debt recovery procedure shall include provisions to the following effect—

- (a) that the nominated person and the Secretary of State shall be consulted prior to any determination by the Authority being made under regulation 5(6);
- (b) that the interval between the making of the determination referred to in regulation 5(6) and the application of that determination on a levy payment date shall be at least one month;
- (c) that the sum representing interest referred to in regulation 5(6) in respect of any outstanding debt shall be calculated in respect of the period from the date on which the Authority reasonably considers that the nominated person failed to comply with the debt recovery procedure in relation to the debt to a material extent until the earliest of the following events—
  - (i) the debt is collected;
  - (ii) such time as the Authority reasonably considers that the nominated person has done all that is reasonable in order to comply with the procedure in relation to the debt; or
  - (iii) such time as the Authority reasonably considers that the nominated person has done all that is reasonable to seek to recover the debt;
- (d) that the interest rate to be applied in the calculation of the figure for “x” in regulation 5 shall not exceed (but where the Authority considers it appropriate it may be less than) the base rate of Barclays Bank plc current from time to time;
- (e) that the procedure may be amended at any time by agreement in writing of the Authority and the nominated person provided that the Secretary of State has been consulted before any such amendment takes effect.

(3) The Authority and the nominated person shall comply with the debt recovery procedure.

(4) In the event that there is a change in the identity of the nominated person, any new nominated person shall comply with the debt recovery procedure in the form it exists at the time the Secretary of State approves of such new nominated person until such time as that procedure is amended under paragraph (2)(e).”.

(7) Regulation 6(5) shall be replaced with the following:

“(5) The Authority shall also notify the rate of the levy to the applicant for a licence under section 6(1)(d) of the Act at the time the licence is granted.”.

(8) In regulation 8(1) the words “public electricity supplier” shall be replaced with “licensed distributor”.

(9) In regulation 10(2) after the words “licensed supplier” insert “or a licensed distributor”.

(10) In regulation 22(3) the words “public electricity supplier” shall be replaced with “licensed supplier”.

(11) Regulation 28 shall be replaced with the following:

**“Application and distribution of levy**

**28.—**(1) Payments received by the Authority in a qualifying month pursuant to these Regulations (with the exception of payments received by it pursuant to regulation 41(3)) shall be applied and distributed by it in accordance with this regulation.

(2) The Authority shall deduct and retain from the payments mentioned in paragraph (1) the amount of the administrative expenses incurred by it in respect of the qualifying month as the person prescribed by these Regulations for the purposes of section 33(1)(b) and (c) of the Act and in respect of its collection of payments from the nominated person pursuant to section 33(5A) of the Act.

(3) Where in relation to the levy payment date immediately after the end of the qualifying month mentioned in paragraph (1), the Authority has received a statement from the nominated person in accordance with regulation 41(1) and (2) which states that payment is due to be made to the nominated person pursuant to regulation 5(8), the payments mentioned in paragraph (1) less the amounts deducted under paragraph (2) shall, subject to paragraphs (4) and (5), be applied to the making of such payment on the levy payment date in relation to which such statement has been prepared.

(4) If any of the payments mentioned in paragraph (1) are not received by the Authority in time to be applied and distributed in accordance with the preceding provisions of this regulation, such payments shall, as soon as practicable after the payment mentioned in paragraph (3) has been made, be added in the appropriate amounts to the next payment due to be made under this regulation to the nominated person.

(5) For the purposes of paragraph (4), the appropriate amount as regards the payment mentioned in that paragraph in relation to the nominated person is an amount equal to the difference between—

- (a) the amount due to be paid to the nominated person under regulation 5(8); and
- (b) the payment actually made to the nominated person under paragraph (3).”.

(12) In regulation 33(1)(c) delete the word “or” and at the end of regulation 33(1)(d) insert the following: “; or

- (e) a licensed distributor.”.

(13) In regulation 37:

- (a) in paragraphs (1) and (2) after the words “each licensed transmitter” insert “, each licensed distributor”;
- (b) in paragraph (3)(b) after the words “a licensed transmitter” insert “, a licensed distributor”; and
- (c) in paragraph (b) of the definition of “relevant records” after the words “a licensed transmitter” insert “, a licensed distributor”.

(14) In regulation 39(1) after the words “each licensed transmitter” insert the words “, each licensed distributor” and in regulation 39(2)(a) after the words “licensed transmitter” insert the words “, licensed distributor”.

(15) In regulation 41(1) the words “In respect of each qualifying month” shall be replaced with “In advance of each levy payment date”.

(16) Regulation 41(3) shall be replaced with the following:

“(3) Where in relation to any levy payment date the Amount is a negative number, the nominated person shall, subject to regulation 43, pay that sum to the Authority on the fifth banking day after the levy payment date immediately following the date on which the statement referred to in paragraph (2) has been provided.”.

(17) Regulation 43 shall be deleted.

- (18) In regulation 44 after paragraph (2) there shall be inserted the following:
- “(3) Where payment is required to be made to or from a public electricity supplier under this regulation, such payment shall instead be made to or by the relevant supply successor company (as defined in the Electricity from Non-Fossil Fuel Sources Saving Arrangements Order 2000 (as amended by the Electricity from Non-Fossil Fuel Sources Saving Arrangements (Amendment) Order 2001(1)).”.
- (19) In the Schedule:
- (a) paragraph 7 shall be replaced with the following:
- “7. In the case of a licence under section 6(1)(d) of the Act granted after the coming into force of these Regulations, the date upon which the licence holder intends to start undertaking the activities authorised by the licence.”;
- (b) in paragraph 9 after each reference to “a transmission system” insert “or a distribution system”;
- (c) paragraph 17(a) shall be replaced with the following:
- “(a) each of the items defined in regulation 5 as “C”, “A”, “a”, “ii”, “io”, “y” and the Amount and any sums included under paragraph (5) of that regulation in the calculation of the Amount.”.